

Small Business Administration

§ 134.211

must be filed and served with the motion. The Judge, on his or her own initiative, may order a party to file and serve an amendment to a pleading.

(b) *Supplemental pleadings.* Upon motion (see § 134.211), and under terms needed to avoid prejudice to any non-moving party, the Judge may permit the filing and service of a supplemental pleading setting forth relevant transactions or occurrences that have taken place since the filing of the original pleading. The proposed supplemental pleading must be filed and served with the motion. The Judge, on his or her own initiative, may order a party to file and serve a supplemental pleading.

(c) *8(a) appeals.* In 8(a) program appeals, amendments to pleadings and supplemental pleadings will be permitted by the Judge only upon a showing of good cause.

(d) *Answer or response.* In an order permitting the filing and service of an amended or supplemented petition or order to show cause, the Judge will establish the time for filing and serving an answer or response.

[61 FR 2683, Jan. 29, 1996, as amended at 67 FR 47248, July 18, 2002; 75 FR 47441, Aug. 6, 2010]

§ 134.208 Representation in cases before OHA.

(a) A party may represent itself, or be represented by an attorney. A partner may represent a partnership; a member may represent a limited liability company; and an officer may represent a corporation, trust, association, or other entity.

(b) An attorney for a party who did not appear on behalf of that party in the party's first filing with OHA must file and serve a written notice of appearance.

(c) An attorney seeking to withdraw from a case must file and serve a motion for the withdrawal of his or her appearance.

[67 FR 47248, July 18, 2002]

§ 134.209 Requirement of signature.

Every written submission to OHA, other than evidence, must be signed by the party filing that submission, or by the party's attorney. By signing the submission, a party or its attorney at-

tests that the statements and allegations in that submission are true to the best of its knowledge, and that the submission is not being filed for the purpose of delay or harassment. False statements are subject to criminal penalties. Any misconduct is subject to sanctions (see § 134.219).

[61 FR 2683, Jan. 29, 1996, as amended at 75 FR 47441, Aug. 6, 2010]

§ 134.210 Intervention.

(a) *By SBA.* SBA may intervene as of right at any time in any case until 15 days after the close of record, or the issuance of a decision, whichever comes first.

(b) *By interested persons.* Any interested person may move to intervene at any time until the close of record by filing and serving a motion to intervene containing a statement of the moving party's interest in the case and the necessity for intervention to protect such interest. An interested person is any individual, business entity, or governmental agency that has a direct stake in the outcome of the appeal. The Judge may grant leave to intervene upon such terms as he or she deems appropriate.

[67 FR 47248, July 18, 2002]

§ 134.211 Motions.

(a) *Contents.* All motions must state the relief being requested, as well as the grounds and any authority for that relief. A motion must be filed, served, and accompanied by a certificate of service (see § 134.204).

(b) *Statement of whether motion is opposed.* Except when filing a motion to dismiss or a motion for summary decision, the moving party must make reasonable efforts before filing the motion to contact any non-moving party and determine whether it will oppose the motion and must state in the motion whether each non-moving party will oppose or not oppose the motion. If the moving party cannot determine whether a non-moving party will oppose the motion, the moving party must describe in the motion the efforts made to contact that non-moving party.

(c) *Response.* All non-moving parties must file and serve a response to the motion or be deemed to have consented

to the relief sought. The response is due no later than 15 days after the motion is served, unless the Judge sets a different deadline. On motion, or on his or her own initiative, the Judge may permit a reply to a response and/or oral argument on the motion.

(d) *Service of orders.* OHA will serve upon all parties any written order issued in response to a motion.

(e) *Motion to dismiss.* A respondent may file a motion to dismiss any time before a decision is issued. If an answer or response to the appeal petition has not yet been filed, the motion to dismiss stays the respondent's time to answer or respond.

(f) *Motion for an extension of time.* Except for good cause shown, a motion for an extension of time must be filed at least two business days before the original deadline.

[61 FR 2683, Jan. 29, 1996, as amended at 63 FR 35766, June 30, 1998; 67 FR 47248, July 18, 2002; 75 FR 47441, Aug. 6, 2010]

§ 134.212 Summary judgment.

(a) *On motion by a party.* At any time before the close of record, a party may move for summary judgment as to all or any portion of the case, on the grounds that there is no genuine issue as to any material fact, and that the moving party is entitled to a decision in its favor as a matter of law.

(1) *Contents of motion.* The motion must include a statement of the material facts believed to be undisputed and the party's legal arguments. The motion may include supporting statements in accordance with 28 U.S.C. 1746. The motion must be filed, served, and accompanied by a certificate of service (see § 134.204).

(2) *Response.* No later than 15 days after the service of a motion for summary judgment, all non-moving parties must file and serve a response to the motion or be deemed to have consented to the motion for summary judgment.

(3) *Cross-motions.* In its response to a motion for summary judgment, a party may cross-move for summary judgment. The initial moving party must file and serve a response to any cross-motion for summary judgment within 15 days after the service of that cross-motion or be deemed to have consented

to the cross-motion for summary judgment.

(4) *Stay.* If an answer or response to the appeal petition has not yet been filed, the motion for summary judgment stays the respondent's time to answer or respond. If the Judge denies the motion and an answer or response has not yet been filed, the respondent must file the answer or response within 15 days after the order deciding the motion unless otherwise ordered by the Judge.

(b) *On the Judge's own initiative.* The Judge may issue an order granting summary judgment as to all or any portion of the case in absence of a motion if there is no genuine issue to any material fact, and a party is entitled to a decision in its favor as a matter of law.

(c) *Appeal of an SBA determination.* If the SBA determination being appealed was based on multiple grounds, SBA may move for summary judgment on one or more of those grounds. If the Judge finds, as to any ground, that there is no genuine issue of material fact and that the SBA is entitled to a decision in its favor as a matter of law, the Judge will grant the motion for summary judgment and dismiss the rest of the appeal.

[75 FR 47441, Aug. 6, 2010]

§ 134.213 Discovery.

(a) *Motion.* A party may obtain discovery only upon motion, and for good cause shown.

(b) *Forms.* The forms of discovery which a Judge can order under paragraph (a) of this section include requests for admissions, requests for production of documents, interrogatories, and depositions.

(c) *Limitations.* Discovery may be limited in accordance with the terms of a protective order (see § 134.205). Further, privileged information and irrelevant issues or facts will not be subject to discovery.

(d) *Disputes.* If a dispute should arise between the parties over a particular discovery request, the party seeking discovery may file and serve a motion to compel discovery. Discovery may be opposed on the grounds of harassment, needless embarrassment, irrelevance,